IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:21.03.2007

CORAM:

THE HON'BLE MR. JUSTICE P. SATHASIVAM
AND
THE HON'BLE MR. JUSTICE N. PAUL VASANTHAKUMAR

WRIT APPEAL No.3630 of 2004
and WAMP.No.6891 of 2004

1.Kolammal (died)
2.Dr. A. Nagarajan
(Second appellant brought on record as Legal Representative of the deceased sole appellant vide order of this Court dt.13.03.2007 made in WAMP.No.1941/2006.) .. Appellant

vs.

1.The State of Tamil Nadu rep. By its Secretary, Housing & Urban Development Department Fort St. George, Chennai 9.

2.The Special Tahsildar Land Acquisition Neighbourhood Scheme Nagercoil, Kanyakumari District.

3.The Chairman Tamil Nadu State Housing Board Nandanam, Chennai 600 035. .. Respondents

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Writ Appeal filed under Clause 15 of the Letters Patent against the order of this Court dated 11.04.2002 filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records relating to the Land Acquisition proceedings under 4(1) Notification CI.10475/90 dated 30.10.91 published in G.O.Ms.787 dated 23.11.92 of the respondents and quash the same.

For appellant : Mr. N.R. Chandran, Senior Counsel for Mr. R.Balasubramanian
For respondents : Mr. P. Subramanian Government Advocate for R.1 & R.2
Mr. S. Kasikumar for R.3

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JUDGMENT

(Judgment of the Court delivered by P. SATHASIVAM,J.)

Aggrieved by the order of the learned Single Judge dated 11.4.2002 made in W.P.No.21093 of 1994, in and by which the learned Judge after finding that the award had been passed as early as on 23.11.1994 and the acquisition proceedings cannot be challenged after passing of the award, dismissed the writ petition, the writ petitioner preferred the above appeal.

2. For the sake of convenience, the parties are referred to hereinafter as arrayed in the writ petition.

3. Heard Mr.N.R.Chandran, learned senior counsel for the appellant, Mr.P.Subramanian, learned Government Advocate for the respondents 1 and 2 and Mr.S.Kasikumar, learned Standing counsel for the 3rd respondent.

4. Mr.N.R.Chandran, learned senior counsel for the appellant after taking us through the entire acquisition proceedings has raised the following contentions:

(i) Inasmuch as the very same acquisition notification was quashed by this Court in W.P.Nos.20850 and 20851 of 1994 by order dated 15.10.2001 and the writ appeal filed by the Government/Housing Board was also dismissed since the delay had not been condoned, the same order is applicable to the petitioner/appellant and the acquisition proceedings are liable to be quashed.

(ii) The local dailies, "Athirshtam" and Kumari Murasu" in which the publication was made were not having wide circulation in the locality where the land is situate and on this ground also, the acquisition proceedings are liable to be interfered with.

(iii) Inasmuch as the award was passed on the last date of the prescribed period of limitation, viz., 23.11.1994 and there was no prior approval by the authority concerned, the award passed on 23.11.1994 is not a valid award and hence, the entire acquisition proceedings commencing from notification under section 4(1) of the Land Acquisition Act, 1894 (in short, "the Act") are liable to be quashed.

5. On the other hand, learned counsel appearing for the respondents, particularly, the Housing Board, contended that the earlier decision referred to by the learned senior counsel for the petitioner is not applicable to the present case. He further contended that inasmuch as the prayer relates to the quashing of notification under section 4(1) of the Act as well as declaration under section 6 of the Act and the writ petition has been filed well after passing of the award, in the absence of any amendment to the prayer, the writ petition is liable to be dismissed in view of the settled legal position by this Court and the Apex Court.

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6. We have perused the entire records and considered the rival contentions.

7. The original writ petitioner, Kolammal,D/o.Velammal was the owner of the land to an extent of 80.745 cents in Old Survey No.1932 and Re-survey No.N2/195 in Agastheeswaram Taluk, Nagercoil. The Tamil Nadu Housing Board wanted to acquire lands at Nagercoil for the public purpose of development of Nagercoil Environment Scheme. Though, according to the Department, the entire acquisition proceedings were completed fulfilling all the requirements, it is the grievance of the petitioner-Kolammal that there were several infirmities, which necessitated her to approach this Court by filing writ petition. We have already referred to the main contentions raised by the learned senior counsel for the petitioner. Among the contentions, first let us consider the last contention, viz., whether the award has been passed in terms of First Proviso to sub-section (1) of Section 11 of the Act. It is true that the objections relating to the defects in the award dated 23.11.1994 have not been specifically raised in the writ petition. However, realising that the award was passed on the last date of prescribed period of limitation without prior approval of the competent authority, the petitioner filed a petition in W.A.M.P.No.63 of 2007 raising additional grounds, and we ordered the said petition on 13.3.2007. In para-6 of the affidavit filed in support of the said petition, it is stated that,

> 'Moreover in this case, Section 6 declaration was published on 23.11.1992 and the newspaper publication was on 24.11.1992. The award had been passed immediately before the expiry of two years, that is, on 23.11.1994 by the Land Acquisition Officer. We reliably understand the said officer has not obtained an approval as required under section 11 of the Land Acquisition Act from the competent authority. Since the two years period mentioned in Proviso to section 11(A) expired on 24.11.1994, the entire proceedings get abated."

In such circumstances, we permit the learned senior counsel to elaborate the above point in detail.

8. As per section 11-A of the Act, an award under section 11 has to be passed within a period of two years from the date of publication of declaration under section 6 of the Act and if no award is made within that period, the entire land acquisition proceedings stand lapsed. It is not in dispute that the prescribed period has to be reckoned from the date of last mode of publication of declaration made under section 6 of the Act. It is also not in dispute that the newspaper publication of declaration under section 6 of the Act was made on 24.11.1992. In such circumstances, the award has to be passed on or before 23.11.1994, and the award in this case was passed on the last date, that is, 23.11.1994.

9. Now let us consider, whether the award passed on 23.11.1994 is a valid one and it satisfies the First Proviso to section 11(1) of the Act. The relevant provisions are as follows:

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11. Enquiry and award by Collector:- (1) On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given under section 9 to the measurements made under section 8, and into the value of the land at the date of the publication of the notification under section 4, sub-section (1), and into the respective interests of the persons claiming the compensation and shall make an award under his hand of--

(i) the true area of the land;
(ii) the compensation which, in his opinion, should be allowed for the land;and
(iii)the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him;

Provided that no award shall be made by the Collector under this sub-section without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorise in this behalf:

Provided further that it shall be competent for the appropriate Government to direct that the Collector may make such award without such approval in such class of cases as the appropriate Government may specify in this behalf".

10. It is clear from the First Proviso referred to above that no award shall be made by the Collector without the prior approval of the Government or of such officer as prescribed. It is not the case of the respondents that at any point of time, the Government permitted the Collector to make award without prior approval, particularly in the acquisition proceedings in question. It is also brought to our notice that by G.O.Ms.No.1027, Revenue Department, dated 25.9.1992, the Government delegated the power to approve both the pre-valuation statement and award for payment of compensation not exceeding Rs.20 lakhs with the Collector/Additional Collector-District Revenue Officers. As per the said Government Order, the pre-valuation statements and awards for payment of compensation in excess of Rs.20 lakhs shall be approved by Commissioner of Land Administration.

11. In view of the fact that the objection relating to the prior approval in passing the award was taken only during the pendency of writ appeal, we afforded adequate opportunity to the Government Pleader for

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production of records and to get specific instructions for the same. After number of adjournments, ultimately, learned Government Advocate placed before us a copy of Fax Message relating to proceedings of the District Revenue Officer dated 23.11.1994. The proceedings dated 23.11.1994 make it clear that instructions were issued by the District Revenue Officer to the Land Acquisition Officer to pass an award and requested to send the proposal for ratification along with copy of the award. We perused the entire proceedings dated 23.11.1994 and we find that without the prior approval of the competent authority the Land Acquisition Officer was allowed to pass an award and in fact, based on the said instructions, he passed the award on the same day, that is, 23.11.1994. We have already extracted the First Proviso to sub section (1) of section 11 of the Act which mandates prior approval from the Government or the competent authority.

12. The above said First proviso to sub section (1) of section 11 of the Act was considered by a Two Judge Bench of the Apex Court in STATE OF U.P. .VS. RAJIV GUPTA AND ANOTHER ((1994) 5 SCC 686). The following discussion and ultimate conclusion are relevant:

> "6. Section 11 postulates of conducting an enquiry and making the award by the Collector. The first proviso envisages that "no award shall be made by the Collector under sub-section without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorise in this behalf". It is common knowledge that exercising the power under the first proviso, the appropriate Government made rules or statutory orders or instructions whatever be the nomenclature, they have make an award up to a particular pecuniary limit without prior approval either of the appropriate Government or an officer authorised by the approval of the State Governments in that behalf. If the award exceeds the limit, prior award made in violation thereof, renders the award non est and void as it hinges upon the jurisdiction of the Land Acquisition Collector or Officer. No doubt, Mr.Markandeya is right that the State had not produced before us rules or orders issued under the first proviso to Section 11 that the Land Acquisition Officer shall not make an award exceeding one crore of rupees without prior approval of the Commissioner, namely, Commissioner, Board of Revenue. But nonetheless, there is a statutory inhibition by first proviso to Section 11 that the prior approval either of the appropriate Government or of an officer which the appropriate Government authorises in that behalf, is mandatory for making an award. It is a condition precedent".

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It is clear that the prior approval of the State Government or the authorised officer is mandatory and any award made in violation thereof renders the award non-est. Passing award with prior approval of the competent authority or the competent officer is a condition precedent.

13. We have already pointed out that section 11-A of the Act mandates that the award has to be passed within two years from the date of last mode of publication of section 6 declaration. In view of the fact that there is no valid award with prior approval by the Government or the authorised officer as per section 11-A of the Act which is mandatory, the entire acquisition proceedings under the Act stand lapsed. In the very same judgment, after finding that since prior approval was not given before the expiry of 21.12.1992, there is no award made by the Land Acquisition Officer, their Lordships held that in the eye of law, the proposed award of the Collector under section 11 of the Act is not the award. They further concluded that section 11-A is mandatory and on expiry of two years from the date of publication of declaration, i.e. on 21.12.1992, the entire proceedings under the Act stood lapsed.

14. Compliance of prior approval by the State Government or its authorised authority has been emphasised by the Supreme Court in N. Boman Behram vs. State of Mysore (1974 (2) SCC 316). While considering the first proviso to Section 11 of the Act, their Lordships have held,

> " 10. The proviso states that no award shall be made without the previous approval of the State Government. An award made under Section 11 of the 1961 Act is an offer of compensation. The Deputy Commissioner makes an offer. The Deputy Commissioner is an agent of the Government. The Government is the ultimate authority to approve the award. Therefore, the proviso enjoins that no award shall be made without the previous approval of the State Government. It is wrong to suggest that any opinion of the Deputy Commissioner is being over-reached by the State Government. The Deputy Commissioner is not acting in judicial or quasi-judicial capacity in making the award under Section 11 of the 1961 Act. The Deputy Commissioner acts in an administrative capacity as an agent of the State Government. The area of authority of the Deputy Commissioner is subject to approval by the State Government. The finality of the award under Section 11 of 1961 Act rests with the State Government.
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> 11. Counsel for the appellant submitted that there were no guidelines for the approval by the State Government under the proviso to Section 11 of the 1961 Act. This is an erroneous submission. The Government in approving the award has to take into

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consideration the provisions of the Act. Any grievance with regard to the quantum of compensation or any other grievance on account of compensation is capable of being remedied under the provisions of the Act. "

15. In YUSUFBHAI NOORMOHMED NENDOLIYA .vs. STATE OF GUJARAT ((1991)4 SCC 531), a Three Judge Bench of the Apex Court held that if the award not passed within the prescribed period of two years, all proceedings would get lapsed and the land would be reverted to the land owner.

16. In PARAMARAJ ..vs.. STATE OF TAMIL NADU (1999(III) CTC 715), in which one of us (P.Sathasivam,J.), after following the decision of the Apex Court in Rajiv Gupta case [1994 (5) SCC 686], cited supra and after finding that the award was not approved by the competent authority and not passed within the prescribed period of two years, quashed the entire land acquisition proceedings.

17. In RAMANUJAM, N.D. ..vs.. THE STATE OF TAMIL NADU (2006(1) CTC 51), a Division Bench of this Court, in which one of us (N.Paul Vasanthakumar,J.) was a party, when similar objection was raised, viz., there was no prior approval before passing the award, after finding that in spite of affording adequate opportunity, the respondents had not placed the records and proved that there was prior approval, allowed the writ appeal and quashed the entire land acquisition proceedings.

18. While considering the non-obtaining of "prior approval' under Forest (Conservation) Act, 1980 read with Tamil Nadu Mines and Mineral Concessional Rules, 1939, one of us (P. Sathasivam,J.) in K.V.Shanmugam vs. State of Tamil Nadu (1997 (II) CTC 431) held that the restriction as to obtaining of prior approval either for granting or renewing the lease for quarrying the minerals comes into operation in the area which is situate in the reserve forest and State Government cannot grant or renew the lease for quarrying the minerals in such area without obtaining the prior approval of the Central Government. This Court also held that "prior approval" found in Section 2 of the said Act has to be strictly complied with since it is a mandatory provision. We are in agreement with the said view and the same is applicable to the case on hand to decide whether prior approval is mandatory before passing an award under the Land Acquisition Act.

19. In JAWAHAR COLLEGE STAFF ASSOCIATION, ETC./SECRETARY, JAWAHAR SCIENCE COLLEGE, ETC., ..vs.. UNIVERSITY OF MADRAS & OTHERS (1994 WLR 84), while considering the approval/prior approval under the Tamil Nadu Private Colleges (Regulation) Act, 1976, the Division Bench of this Court, referred to the Full Bench decision of Allahabad High Court in SHAKIR HUSAIN ..vs.. CHANDOO (AIR 1931 All. 576). The Allahabad High Court construed the words 'approval' and 'permission' and held as follows:

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"Ordinarily, the difference between the approval and the permission is that in the first the act holds good until disapproved, while in the other case it does not become effective until permission is obtained".

Referring to the above passage, the Division Bench of this Court concluded that,

"Therefore, it is clear that the appointments made by a private college will become effective as per the terms contained in the order of appointment, and in the event those appointments are not approved by the Syndicate of the University, they cease to be effective from the date they are disapproved".

20. While considering the approval/prior approval, the Supreme Court in NANDKISHORE GANESH JOSHI ..vs.. COMMISSIONER, MUNICIPAL CORPORATION OF KALYAN & DOMBIVALI ((2004) 11 SCC 417), in para-17 held that,

"The approval of a contract and that too with previous approval by the Standing Committee cannot, thus, be said to be an empty formality. (See Canbank Financial Services Ltd. .. vs.. Custodian, Scale para 35). The Standing Committee is required to perform its functions in terms of the provisions of the said Act. A statutory authority has also a duty to act in public interest as also fairly and in a reasonable manner"

21. The above statutory provisions viz., sections 11 and 11-A of the Act as well as the judicial pronouncements make it clear that (i) the award under section 11 of the Act has to be passed within a period of two years from the date of last mode of publication of declaration under section 6 of the Act; (ii) prior approval by the Government or the authorised authority is mandatory while passing award; and (iii) passing the award beyond the prescribed period and without the prior approval of the Government or prescribed authority vitiates the entire acquisition proceedings.

22. Mr. S.Kasikumar, learned counsel appearing for the Tamil Nadu Housing Board, by drawing our attention to various decisions of Apex Court as well as this Court, vehemently contended that the present writ petition, which was filed after passing of the award, is not maintainable and liable to be dismissed. We are conscious of the fact that the Supreme Court as well as this Court in many decisions held that no writ petition should be entertained after passing of the award under the Land Acquisition Act, [vide: (i) AIR 2000 SC 671 (Municipal Council, Ahmednagar vs. Shah Hyder Beig); (ii) (2002) 7 SCC 712 (Urban Improvement Trust, Udaipur vs. Bheru Lal); (iii) (2005) 3 CTC 1 (Ramalingam vs. State of Tamil Nadu rep. By Secretary to the Industries Department, Chennai 9); (iv) (2005) 3 CTC 666 (The Secretary, Tamil Nadu Housing Board, Nandanam, Madras vs. The State of Tamil Nadu rep. By the Commissioner and Secretary to Government, Housing and Urban Development Department, Chennai 9.); and (v) (2005) 3 CTC 691 (S. Harshavardhan vs. State of Tamil Nadu)

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23. However, when there is a defect in passing of the award it would be possible for the aggrieved person to point out the same only after passing of the award. The general principle that no writ petition would be entertained after passing of the award is inapplicable when the aggrieved person points out that the award is defective, particularly when the mandatory condition of prior approval as per First Proviso to sub-section (1) of Section 11 of the Act was not satisfied and the award was not passed within the prescribed period of two years from the date of last mode of publication of 6 declaration. No doubt, the said challenge should be made within a reasonable time and if there is enormous delay, the same cannot be entertained. As pointed out earlier, in the case on hand, the proceedings of the District Revenue Officer dated 23.11.1994 clearly show that prior approval was not obtained before passing of award on 23.11.1994 and in fact, the District Revenue Officer permitted the Land Acquisition Officer to pass award and get it ratified later, which is not permissible as prior approval is mandatory. As rightly pointed out by the learned senior counsel for the petitioner, it is not an empty formality and it is the duty of the Government or the authorised authority to verify all relevant details commencing from notification issued under Section 4(1) of the Act and ending with fixation of compensation with reference to various aspects.

24. In the light of the above discussion, we accept the submission of the learned senior counsel for the appellant and hold that inasmuch as the award passed on 23.11.1994 without prior approval of the Government or the authorised authority is bad and in view of the fact that the same was passed on the last day of prescribed period of limitation, the entire acquisition proceedings stand lapsed. Even a fresh award at this juncture by the Land Acquisition Officer is not permissible in accordance with law and hence, the entire acquisition proceedings are liable to be quashed.

25. In addition to the above infirmity, the learned senior counsel for the petitioner has brought to our notice that the very same acquisition proceedings were quashed by one of us (P.Sathasivam,J.) in W.P.Nos.20850 & 20851 of 1994 by order dated 15.10.2001. According to Mr. N.R.Chandran, learned senior counsel, in view of the decision of this Court in STATE OF TMAIL NADU ..vs.. DEVAKI (ILR (1997) 1 Madras 76), the said order dated 15.10.2001 is applicable to the writ petitioner. It is true that those writ petitions were allowed, on a different point, viz., failure to comply with Rule-3(b) of the Land Acquisition Rules. In the absence of any such information or objection in the case on hand, we are of the view that the said decision though confirmed in Writ Appeal is not applicable to this case.

26. Regarding the publication in the local newspapers, the learned senior counsel pointed out that the newspapers (i) Athirstam and (ii) Kumarimurasu are not having wide circulation in the locality where the land is situate. In THE SECRETARY TO GOVERNMENT OF TAMIL NADU .vs. J.SIVAPRAKASAM ((2005)2 MLJ 106), the Division Bench of this Court held that it is for the State to prove that the newspapers

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are having reasonably wide circulation in the locality. In CHAIRMAN & M.D.,TNHB V. PUSHPAVENI 2006 (4) MLJ 1405, a Division Bench of this Court, in which one of us (P.Sathasivam,J.) was a party, has held that the publication in two dailies is mandatory. Though the learned senior counsel for the petitioner has raised other contentions including the one that there was no proper publication in terms of the provisions of the Act, in view of our conclusion on the issue relating to passing of award, we are of the view that there is no need to elaborate other contentions.

In these circumstances, we are of the view that the learned Judge has not adverted to all the above mentioned legal issues and factual details and we are unable to accept his conclusion. We therefore hold that the petitioner is entitled to succeed; consequently, the order of the learned Judge dated 11.04.2002 made in W.P.No.21093 of 1994 is set aside and the entire acquisition proceedings are quashed and the writ appeal is allowed. No costs. Consequently, connected WAMP., is closed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

kh

To

1.The Secretary,
State of Tamil Nadu
Housing & Urban
Development Department
Fort St. George, Chennai 9.

2.The Special Tahsildar
Land Acquisition
Neighbourhood Scheme
Nagercoil, Kanyakumari District.

3.The Chairman
Tamil Nadu State Housing Board
Nandanam, Chennai 600 035.

1 cc To Mr.K.Chelladurai, Advocate, SR.17483.
1 cc To Mr.R.Balasubramaniam, Advocate, SR.17187.
1 cc To The Government Pleader, SR.17572.

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